

Patrick L. Shorty, Pro Se
Spring Creek Correctional Center
P.O. Box 5001
Seward, Alaska 99664

RECEIVED

JUN 01 2007

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

PATRICK L. SHORTY,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 3:05-cv-00237-TMB
)	
MUNICIPALITY OF ANCHORAGE,)	
Officer Andrew Cottle,)	
Officer Gregory Witte,)	
Officer Kenneth D. McCoy,)	
)	
Defendants.)	
)	

MOTION TO APPEAL DENIED MOTION FOR STAY
PENDING RESOLUTION OF CRIMINAL PROCEEDINGS

Comes now Patrick L. Shorty, Plaintiff, moves this court with MOTION TO APPEAL DENIED MOTION FOR STAY PENDING RESOLUTION OF CRIMINAL PROCEEDINGS. Plaintiff filed a motion for stay pending resolution of criminal proceedings (see Docket 37) and filed a motion request for reconsideration of motion to stay pending resolution of criminal proceedings (see Docket 45).

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff prisoner moved to stay his 42 U.S.C.S. § 1983 alleging violations of improper questioning, arrest, and wrongful imprisonment on murder charges pending outcome of his parallel state court criminal proceeding.

OVERVIEW: Plaintiff prisoner filed a 42 U.S.C.S. § 1983 action alleging that he was improperly questioned, falsely arrested and wrongly imprisoned on murder charges and that exculpatory evidence was destroyed by law enforcement officers. he was convicted of second degree murder. The conviction was on appeal in state court criminal proceeding. The motion was granted. Plaintiff's § 1983 claims would have a direct bearing on the integrity of the criminal proceedings

pending in the state court system. The interests of comity and judicial economy thus strongly supported stay.

CORE TERM: criminal action, wrongfully, arrested, falsely, murder, criminal proceeding, presently, convicted

Civil Procedure>Jurisdiction>General Overview

Civil Procedure>Pretrial Judgments>General Overview

A district court has discretion to, and indeed should, **stay** a Section 1983 action if it might interfere with the pending **resolution** of a related state court **criminal** action. See Deakins v. Monaghan, 484 U.S. 193, 202, 108 S. Ct. 523, 529-30, 98 L. Ed. 2d 529 (1988); Lewis v. Beddingfield, 20 F.3d 123, 125 (5th Cir. 1994); Estes-El v. Long Island Jewish Med. Ctr., 916 F. Supp. 268, 269-70 (S.D.N.Y. 1995) (collecting cases). A **stay** allows the state case to go forward "without interference from its federal sibling, [*3] while enforcing the duty of the federal courts to assume jurisdiction properly exists. Deakins, 484 U.S. at 202-03, 108 S. Ct. at 530 (citation omitted). It is undisputed that this action and the state court **criminal** action are based on the same events. Ellwood's Section 1983 claims that he was falsely arrested and wrongly convicted would have a direct bearing on the integrity of the **criminal** proceedings pending in the Louisiana state court system. The interests of comity and judicial economy thus strongly support a **stay**.

For the foregoing reasons, Ellwood's motion to **stay** is GRANTED. This case is hereby administratively closed pending the outcome of Ellwood's direct **appeals** in his state court **criminal** proceeding.

New Orleans, Louisiana, this 4th day of August, 2000.

SARAH S. VANCE

UNITED STATES DISTRICT JUDGE

See RUSSELL ELLWOOD VERSUS THE METROPOLITAN AREA TASK FORCE, ET AL.

CIVIL ACTION NO: 98-3370 SECTION: "R"(3)

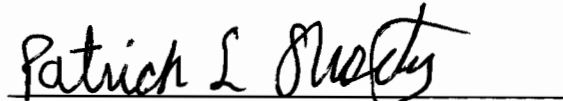
Plaintiff prisoner was convicted of sexual assault in the first degree, assault in the fourth degree, resisting arrest, providing false information. The conviction is on appeal in the state court criminal proceeding. Case No. 3AN-S03-7796 CR. is related to this Case No. 3:05-cv-00237-TMB.

Plaintiff prisoner Patrick L. Shorty moves to **stay** his 42 U.S.C.S. § 1983 alleging violations of **excessive/deadly use of**

force/illegal questioning and arrest under 42 U.S.C. § 1983, and inadequate training, supervision, custom, practices, policies under 42 U.S.C. § 1983.

United States District Court has discretion to, and should, stay a Section 1983 action in this Case No: 3:05-cv-00237-TMB. It is undisputed that this action and the state court criminal action are based on the same events in Case No. 3AN-S03-7796 Cr.

DATED this 27 day of May 2007.

A handwritten signature in black ink, appearing to read "Patrick L. Shorty", is written over a horizontal line.

Patrick L. Shorty, Pro Se

CERTIFICATE OF SERVICE

The undersigned certifies that on the 27 day of May 2007, a true and correct copy of the filing was U.S. mailed delivered to the following: M.O.A. By: PLS

Patrick Shorty #135738
Spring Creek Correctional Center
P.O. Box 5001
Seward, Alaska 99664

United States District Court
Clerk's Office

222 W. 7th Avenue, #4
Anchorage, Alaska 99513-7564

9951387564 0001

